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In the

Supreme Court of the United States

OCTOBER TERM, 1949

No. 335

EDGAR B. WHITCOMB, ANNA S. WHITCOMB and HENRY J. HELMERS, JR.,
Petitioners,
vs.
EARL L. CLARK, Drain Commissioner of Oakland County, STATE LAND OFFICE BOARD, INTERURBAN LAND COMPANY, LAWRENCE WESTPHAL, EUGENE W. KNAPP and BEULAH V. KNAPP, his wife, CITIES OF ROYAL OAK, PONTIAC, FERNDALE, BIRMINGHAM, BLOOMFIELD HILLS, BERKLEY, OAK PARK, HAZEL PARK, CLAWSON, PLEASANT RIDGE and HUNTINGTON WOODS, TOWNSHIPS OF SOUTHFIELD, BLOOMFIELD, TROY and ROYAL OAK, COUNTY OF OAKLAND, CHARLES M. ZIEGLER, State Highway Commissioner, ASHTON J. BERST and EDWIN H. WATERHOUSE,
Respondents

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

In order to clarify certain matters which might confuse the court as a result of reading the brief submitted by the Attorney General for the State of Michigan, we submit herewith a reply.

JURISDICTION

(Unless otherwise indicated, numbers in parentheses refer to pages of the transcript)

Respondent suggests (p. 9 of the opposing brief) inadequacy in the method of raising the federal question. Ap-

parently paragraph 26 of Helmers' answer (109) is overlooked. In this he claimed the benefit of the decree in the bankruptcy proceedings. Both trial court and Supreme Court referred to this contention, and overruled it (200, 312).

This court has consistently ruled that the federal question is adequately presented when the opinion of the lower court considers it and decides it contrary to the contention of the petitioner, irrespective of how it was presented.

San Jose L. & W. Co v. San Jose Ranch Co., 189 U. S. 177;
Miedreich v. Lauenstein, 232 U. S. 236;
Whitfield v. Ohio, 297 U. S. 431;
Nickey v. Mississippi, 292 U. S. 393.

The substantial character of the federal question is denied by the opposing brief on the ground that it has already been passed upon in *Municipal Investors Assn. v. City of Birmingham*, 316 U. S. 153, and *Keefe v. Clark, Drain Commissioner*, 322 U. S. 393. The facts in those cases did not involve a decree of confirmation in debt adjustment proceedings, and no indication is contained in them as to what the court's holding would be as to the effect of such a decree.

MERITS OF THE CASE

Respondents' brief attempts to convince the court that petitioners have no meritorious ground to complain of the judgment of the lower court. This is done by suggesting that irrespective of the grounds asserted by the lower court in refusing to treat the decree of the bankruptcy court as

res judicata, this court should find that such a decree binds only the taxing district, but not its officers, agents or constituent members, and is not a final decree.

All this, we submit, is a federal question, calling for an interpretation of Chapter IX of the Bankruptcy Act. Was it the intent of Congress, in providing for the decree of confirmation of a plan of composition, to bind only the creditors, but to leave unaffected those agents who alone can perform the covenants contained in the plan, and the constituent members? Obviously such a decree would be meaningless unless all parties normally in privity with the district were bound by it. Privity on the part of taxpayers seems to be recognized in the lower court's opinion, consistent with its prior decision in *Real Estate Exchange Corp. v. Drain Commissioner,* 304 Mich. 596, referred to on pages 16 and 20 of our petition and brief. Privity of officers is well settled in *Tait v. Western Maryland Railway Co.,* 289 U. S. 620, and *Sunshine Coal Co. v. Adkins,* 310 U. S. 381.

Because the decree was called an interlocutory decree, does not impair its binding effect. Referring to paragraphs e and f, Sec. 403, Ch. IX, Title 11, U. S. C. A., we see that it is an appealable decree and that it binds creditors as soon as the securities and cash are made available for them. The record shows the composition was put into effect (6, 179, 305) as far as it could be prior to 1947, and hence it became binding upon creditors.

The final decree provided for in Sec. 403 is merely a supplementary decree, determining the fees and costs to be allowed.

The principal apprehension which induces us to file this brief is an innuendo contained in the closing paragraphs

of respondents' brief, to the effect that the decree did not really determine that the additional assessments provided for in paragraph 8 of the plan of composition should be levied on all lands in the district and political units, and that such additional levies were within the law. As shown by the concise statement in the petition and the opinion of the court, tax resources of the district were: (1) unpaid installments upon the original assessments, which were a lien from the organization of the drain district and which were extended through the operation of what was called the supplemental assessment roll of 1937; (2) the power to levy additional assessments, which all parties and the bankruptcy court assumed could be levied on all lands privately owned at the time such levy should be made. As to the former, there necessarily would be a marked shrinkage because liens for the unpaid balances would be cancelled as soon as the state acquired title to lands at tax foreclosure sales, and there would be but a small salvage as a result of their sale by the State Land Office Board (296). The additional assessments to commence in 1947 were designed to augment the former to an amount which would service the refunding bonds. After determining the amount which could be effectively levied each year under the supplemental roll, the additional levy should be added thereto in such a sum that the combined amount would provide for recurring interest, and build a sinking fund for ultimate retirement. Paragraph 8 of the plan of composition did not leave open for future consideration the question of whether this full amount of additional levies could be made. The decree which the lower court affirmed (203) is obviously inconsistent with paragraph 8, and intended so to be, on the ground that the bankruptcy court lacked power to adjudicate questions of state law pertaining to

the taxes which could be levied. This we contend is an erroneous decision of a federal question.

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